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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 DAWANE ARTHUR MALLET,

12 Plaintiff,

13 v.

14 JOHN K. VINCENT, et al.,

15 Defendants.  
16

No. 2:23-CV-0394-DAD-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a federal prisoner proceeding pro se, brings this civil rights action.  
18 Pending before the Court are Plaintiff's complaint, ECF No. 1, and Plaintiff's motion for leave to  
19 proceed in forma pauperis, ECF No. 2.

20 In his complaint, Plaintiff names various federal prosecutors as defendants. See  
21 ECF No. 1. Plaintiff alleges constitutional violations during the course of federal criminal  
22 proceedings initiated in 2002. See id. These proceedings appear to be the basis of Plaintiff's  
23 current conviction, sentence, and ultimate incarceration at a federal penitentiary in Inez,  
24 Kentucky. See id. A review of Plaintiff's other filings in this Court reflects that Plaintiff has in  
25 previous action challenged his conviction and sentence by way of a motion filed under 28 U.S.C.  
26 § 2255, which has been denied, See and that his conviction and sentence are the subjects of an  
27 appeal currently pending in the Ninth Circuit Court of Appeals.

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1 In essence, Plaintiff is attempting to use this civil rights action as an alternative  
2 means of challenging his federal conviction where a collateral challenge under § 2255 has already  
3 been rejected and an appeal of his underlying conviction remains pending. As a general rule, and  
4 as with the more traditional situation of a case filed by a state prisoner, when a prisoner  
5 challenges the legality of his custody, as here, and success on the merits of the plaintiff's claim  
6 necessarily implies the invalidity of the underlying conviction, such a challenge is not cognizable  
7 in a civil rights action. C.f. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973) (applying rule to civil  
8 rights action filed by a state prisoner pursuant to 42 U.S.C. § 1983).

9 Here, Plaintiff's claims have been subject to judicial review in the context of his  
10 previous challenge under 28 U.S.C. § 2255, and Plaintiff's appeal of the underlying federal  
11 criminal conviction is pending in the appellate court. Given this history, Plaintiff's civil rights  
12 claims as presented in the instant action cannot proceed and the case must be dismissed.

13 Based on the foregoing, the undersigned recommends as follows:

- 14 1. This action be DISMISSED for failure to state a claim.
- 15 2. Plaintiff's motion for leave to proceed in forma pauperis, ECF No. 2, be  
16 DENIED as moot.

17 These findings and recommendations are submitted to the United States District  
18 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
19 after being served with these findings and recommendations, any party may file written objections  
20 with the Court. Responses to objections shall be filed within 14 days after service of objections.  
21 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.  
22 Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 Dated: January 23, 2024

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25 DENNIS M. COTA  
26 UNITED STATES MAGISTRATE JUDGE  
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